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JAN 29 2001 MR

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COLIN CALLAHAN BRYNN and BRYAN
NEUBERG,

Plaintiff,

No COO-2123Z

THE CITY OF SEATTLE, a municipal
corporation, and PAUL SCHELL, in his
capacity as Mayor of the City of Seattle and
as an individual, and NORMAN STAMPER,
in his capacity as Chief of Police of the City
of Seattle and as an individual, and
EDWARD JOINER, in his capacity as
Assistant Chief of Police of the City of
Seattle and as an individual,

Defendants

ANSWER

I. ANSWER

Defendants The City of Seattle, Paul Schell, Norman Stamper, and Edward Joiner ("defendants"), by and through their attorneys of records, Sean Sheehan of the City of Seattle Law Department and Stafford Frey Cooper, answer the allegations contained in the complaint as follows

1 Answering paragraph 1, defendants admit that plaintiffs have filed a civil action alleging various causes of action, but deny the validity of such claims. Defendants

ANSWE



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CV 00-02123 #00000008

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IL

1 further deny that plaintiffs were denied any right secured by the constitution and laws of the
2 United States Defendants deny all other remaining allegations

3 2 Answering paragraph 2, defendants deny that the acts alleged occurred, but
4 admit that the court would have personal and subject matter jurisdiction under the statutes
5 alleged had such acts occurred Defendants deny all other remaining allegations

6 3 Answering paragraph 3, defendants deny that the acts alleged occurred, but
7 admit that the court would have pendant jurisdiction over plaintiffs' state law claim under the
8 statute alleged had such acts occurred. Defendants deny all other remaining allegations

9 4 Answering paragraph 4, defendants deny that the acts and omissions alleged
10 occurred, but admit that the acts and omissions would have occurred in King County,
11 Washington Defendants admit that they are either residents and citizens of the State of
12 Washington or are recognized as such under state law Defendants deny all other
13 remaining allegations

14 5 Defendants deny paragraphs 5 and 6 for lack of information

15 6 Answering paragraph 7, defendants deny that the acts alleged occurred, but
16 admit that venue would be proper had such acts occurred Defendants deny all other
17 remaining allegations

18 7 Defendants deny paragraphs 8 and 9 for lack of information

19 8 Answering paragraph 10, defendants admit that the City of Seattle is a
20 municipal corporation organized under the laws of Washington State Defendants admit
21 that plaintiffs are suing them directly under 42 U S C § 1983 and the doctrine of
22 *respondeat superior*, but deny the validity of the claims Defendants deny all other
23 remaining allegations

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ANSWER - 2

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1 9. Answering paragraph 11, defendants admit that Paul Schell is, and was at all
2 times pertinent to this suit, the mayor of the City of Seattle. Defendants deny all other
3 remaining allegations

4 10. Answering paragraph 12, defendants admit that Paul Schell was an agent
5 and an employee of the City of Seattle and that he acted in accordance with the law and his
6 lawful mayoral duties at all times material to this complaint. Defendants deny any
7 remaining allegations

8 11. Answering paragraph 13, defendants admit that the Seattle Police
9 Department is an agency of the City of Seattle. Defendants deny any remaining
10 allegations

11 12. Answering paragraph 14, defendants admit that Norman Stamper was
12 employed by the City of Seattle as the duly-commissioned Chief of Police at all times
13 material to this complaint. Defendants deny that the acts alleged occurred. Defendants
14 admit that Norman Stamper had various responsibilities and a certain amount of authority
15 with respect to the Seattle Police Department and Seattle Police Officers that fall to his
16 position. Defendants deny all other remaining allegations

17 13. Answering paragraph 15, defendants admit that Norman Stamper was an
18 agent and employee of the City of Seattle and that he acted in accordance with the law and
19 his lawful duties as Chief of Police at all times material to this complaint. Defendants deny
20 all other remaining allegations

21 14. Answering paragraph 16, defendants admit that Edward Joiner was employed
22 by the City of Seattle as the duly-commissioned Assistant Chief of Police at all times
23 material to this complaint. Defendants admit that, as Chief of Police, Norman Stamper
24 assigned certain tasks to Edward Joiner. Defendants deny all other remaining allegations

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ANSWER - 3

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1 15 Answering paragraph 17, defendants admit that Edward Joiner was an agent
2 and an employee of the City of Seattle and that he acted in accordance with the law and his
3 duties as Assistant Chief of Police. Defendants deny all other remaining allegations

4 16 Answering paragraph 18, defendants admit that the World Trade Organization
5 ("WTO") held meetings in an area of Seattle sometimes referred to as "downtown" during
6 the week of November 29 - December 3, 1999

7 17 Answering paragraph 19, defendants admit that people gathered in the
8 streets of Seattle, some peacefully and many unlawfully and nonpeacefully. Defendants
9 deny all other allegations for lack of information

10 18 Defendants deny paragraph 20

11 19 Answering paragraph 21, defendants admit that the Seattle Police
12 Department detailed certain police officers to patrol an area of Seattle sometimes referred
13 to as "downtown" on November 30, 1999. Defendants admit that some of the officers wore
14 protective clothing. Defendants deny all other remaining allegations

15 20 Answering paragraph 22, defendants admit that, in accordance with the
16 Seattle Police Department's Manual, some officers are issued defensive gear that includes
17 various weapons and devices aimed at controlling crowds and/or individuals. Defendants
18 deny for lack of information the vague and ambiguous allegation as to what an unspecified
19 person believes or does not believe. Defendants deny that "specialty impact munitions"
20 were provided for the purpose of firing at citizens in the downtown area. Defendants deny
21 that any devices used to assist in controlling crowds and/or individuals caused serious
22 bodily injury or death. Defendants deny that defendants approved, authorized, and/or
23 directed the use of munitions on unarmed citizens who were peacefully exercising First and
24 Fourteenth Amendment rights. Defendants deny all other remaining allegations

25 21 Defendants deny paragraphs 23, 24, 25, and 26 for lack of information.

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ANSWER - 4

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1 22 Paragraph 27 is vague and ambiguous, and defendants therefore deny the
2 same for lack of information

3 23 Defendants deny paragraphs 28, 29, 30, 31, 32, 33, 34, 35, and 36 for lack of
4 information. Defendants deny the authenticity of the photograph attached to plaintiffs'
5 complaint as "Attachment 1" and any allegations contained therein for lack of information

6 24 Defendants deny paragraph 37

7 25 Defendants deny paragraphs 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 for
8 lack of information

9 26 Defendants deny paragraph 48. Defendants further deny the authenticity of
10 photographs attached to plaintiffs' complaint as "Attachment 2" and "Attachment 3" and any
11 allegations contained therein for lack of information.

12 27 Defendants deny paragraph 49 for lack of information

13 28. Defendants deny paragraph 50

14 29 Answering paragraph 51, defendants respond to the realleged paragraphs (¶¶¶
15 1 - 50) as indicated above.

16 30 Answering paragraph 52, defendants admit that they acted in accordance
17 with the law. Defendants deny that the acts and omissions alleged in the complaint
18 occurred. Defendants deny all remaining allegations

19 31 Answering paragraph 53, defendants deny that Colin Brynn's activities
20 constituted federally-protected rights and that defendants violated freedoms protected by
21 the First Amendment. Defendants deny all other remaining allegations.

22 32 Answering paragraph 54, defendants deny that Bryan Neuberg's activities
23 constituted federally-protected rights and that defendants violated freedoms protected by
24 the First Amendment. Defendants deny all other remaining allegations

25 33 Defendants deny paragraphs 55 and 56

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ANSWER - 5

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1 34 Answering paragraph 57, defendants respond to the realleged paragraphs (¶¶
2 1 - 56) as indicated above

3 35 Answering paragraph 58, defendants admit that they acted in accordance
4 with the law. Defendants deny that the acts and omissions alleged in the complaint
5 occurred. Defendants deny any remaining allegations

6 36 Defendants deny paragraph 59

7 37 Answering paragraph 60, defendants deny that plaintiffs were subjected to
8 unreasonable force in violation of the Fourth Amendment. Defendants deny all other
9 remaining allegations

10 38 Defendants deny paragraphs 61 and 62

11 39 Answering paragraph 63, defendants respond to the realleged paragraphs (¶¶
12 1 - 62) as indicated above

13 40 Answering paragraph 64, defendants admit that they acted in accordance
14 with the law. Defendants deny that the acts and omissions alleged in the complaint
15 occurred. Defendants deny any remaining allegations

16 41 Answering paragraph 65, defendants deny that Colin Brynn's activities
17 constituted federally-protected rights and that defendants violated the Fourteenth
18 Amendment with respect to Colin Brynn. Defendants deny all other remaining allegations

19 42 Answering paragraph 66, defendants deny that Bryan Neuberg's activities
20 constituted federally-protected rights and that defendants violated the Fourteenth
21 Amendment with respect to Bryan Neuberg. Defendants deny all other remaining
22 allegations

23 43 Defendants deny paragraphs 67 and 68

24 44 Answering paragraph 69, defendants respond to the realleged paragraphs (¶¶
25 1 - 68) as indicated above.

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ANSWER - 6

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1 45. Answering paragraph 70, defendants admit that Paul Schell was the City of
2 Seattle's mayor and that Norman Stamper was the City of Seattle's Chief of Police
3 Defendants admit that the City of Seattle has in effect various lawful policies and practices
4 Defendants deny that one of its policies, practices, or customs is to use weapons against
5 peaceful, unarmed citizens Defendants deny all other remaining allegations

6 46 Answering paragraph 71, defendants deny that the incidents described in the
7 complaint occurred. Defendants deny all other remaining allegations

8 47 Defendants deny paragraph 72

9 48 Answering paragraph 73, defendants deny that the policies, practices, and/or
10 customs alleged in the complaint exist Defendants admit that Norm Stamper is an
11 authorized policy-maker on police matters. Defendants deny all remaining allegations

12 49 Answering paragraph 74, defendants deny that such a policy exists.
13 Defendants deny all other remaining allegations

14 50 Defendants deny paragraphs 75, 76, 77, 78, 79, 80, 81, 82, 83, and 84

15 51 Answering paragraph 85, defendants respond to the realleged paragraphs (¶¶
16 1 - 84) as indicated above

17 52 Defendants deny paragraphs 86, 87, and 88

18 53 Answering paragraph 89, defendants respond to the realleged paragraphs (¶¶
19 1 - 88) as indicated above

20 54 Defendants deny paragraphs 90, 91, and 92

21 55 Defendants deny any allegations contained in plaintiffs' Prayer for Relief

22 **II. AFFIRMATIVE DEFENSE**

23 For further answer and by way of affirmative defenses, the defendants allege as
24 follows:

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26 **ANSWER - 7**

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1 1 Plaintiffs fail to state a cause of action against the City of Seattle under 42
2 U S C § 1983 or the United States Constitution upon which relief can be granted

3 2 Individual defendants were, at all relevant times, acting in good faith and
4 working within the course and scope of their duties. They are therefore entitled to absolute
5 and/or qualified and/or discretionary immunity and/or are subject to the emergency
6 doctrine

7 3 If plaintiffs sustained any injuries or damages as alleged in the complaint,
8 which defendants categorically deny, those injuries or damages were caused or contributed
9 to by others than the named defendants over whom defendants have no control and for
10 whom defendants have no responsibility. Those claims must therefore be dismissed

11 4 If plaintiffs sustained any injuries or damages as alleged in the complaint,
12 which defendants categorically deny, plaintiffs caused or contributed to those injuries or
13 damages as a result of plaintiffs' contributory fault and/or willful and/or wanton misconduct
14 and/or plaintiffs assumed the risk of injury knowingly. Those claims, in whole or in part, are
15 therefore barred

16 5 Any damages plaintiffs suffered were proximately caused by their fleeing
17 and/or forcibly resisting arrest and/or were in the course of committing a crime at the time
18 of the incidents alleged.

19 6 Defendants had just cause for their actions

20 7 Defendants actions were privileged

21 8 Plaintiffs bring this suit with unclean hands

22 9 Plaintiffs failed to mitigate their damages, if any

23 10 Process and service of process were insufficient

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ANSWER - 8

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III. PRAYER FOR RELIEF

Having fully answered the allegations contained in plaintiffs' complaint, defendants request that the court take the following action

- (1) dismiss plaintiffs' complaint with prejudice,
- (2) order that plaintiffs take nothing thereby,
- (3) require plaintiffs to pay all of defendants' costs, disbursements, and reasonable attorney fees in defending this action,
- (4) award defendants judgment of dismissal, and
- (5) grant such other and further relief in defendants' favor as the court deems just and equitable

DATED this 25th day of January, 2001

STAFFORD FREY COOPER

By Heather L Carr
Ted Buck, WSBA # 22029
Heather L Carr, WSBA # 29780
Attorneys for Defendants

ANSWER - 9

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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury according to the laws of the State of Washington that on this date I caused to be served in the manner noted below a copy of this document entitled **Answer to Complaint** on the following individuals

John R Muenster, Esq
Muenster & Koenig
999 Third Avenue, Suite 4100
Seattle, WA 98104

Fred Diamondstone, Esq
2317 - 24th Avenue East
Seattle, WA 98112

Via Facsimile
 Via Mail
 Via Messenger

DATED this 29th day of January, 2001, at Seattle, Washington.

Mary Ann Jarrett
MARY ANN JARRETT

MARY ANN JARRETT